IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.15818 of 2005
Date of Decision: 16.10.2006

Mahal Food & Beverages Private Limited

Petitioner

versus

Haryana State Industrial Development Corporation Limited and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri A.K.Chopra, Senior Advocate with
Shri Sumeet Goel, Advocate for the petitioner
Shri S.K.Jain, Advocate for respondent No.1
Shri Kamal Sehgal, Advocate for respondent No.2
Shri Vikram Aggarwal, Advocate for respondent No.3

Jasbir Singh, J.

The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India with a prayer that directions be issued to respondent Nos.1 and 2, to consider and decide one time settlement offer/ proposal made by it, in accordance law, with regard to the defaulted loan accounts of the petitioner. It has also been prayed that possession of the mortgaged property be handed back to the petitioner. A further prayer is to issue a writ of certiorari to quash the recovery proceedings initiated against the petitioner by respondent Nos.1 and 2. Prayer is also made to quash letter dated 16.9.2005 (Annexure P/8), vide which, request of the petitioner, to grant it more time, to settle the accounts, was declined.

The petitioner is a private limited company. To start its business/ production unit, it had raised loan in its two accounts, amounting to Rs.1 crore 20 lac and 15 lac respectively from respondent No.2 and loan to the extent of Rs.73.62 lac was raised from respondent No.1. The loan amount was advanced in the year 1998. It is an admitted fact that after availing the loan facility, the petitioner had become defaulter. It had only repaid an amount of Rs.1 lac to the respondents. As on today, total outstanding amount due from the petitioner, without giving benefit of any scheme to it, payable to respondent No.2, approximately comes to Rs.4 crore 36 lac and in the same manner, amount due to respondent No.1, approximately comes to Rs.1 crore 67 lac. Unit/ mortgaged property of the petitioner was taken in possession, by invoking the provisions of Section 29 of the State Financial Corporation Act, 1951 (in short the Act), in the year 2000. For the first time, this writ petition came up for hearing before this Court on 3.10.2005. It has come on record that prior thereto, mortgaged property of the petitioner had already been sold for an amount of Rs.2.28 crore on 16.9.2005 to respondent No.3. When this matter taken up for hearing on 7.8.2006, following order was passed:-

> *"At the time of arguments, offer has been made by counsel for the petitioner that the petitioner is ready to repay the entire amount under One Time Settlement Scheme, which was earlier intimated to it, or the amount, which may be determined now. With a view to test bonafide of the petitioner, it (petitioner) is directed to deposit an amount of Rs.1,25,00,000/- (one crore, twenty five lakhs) with this Court within fifteen days from today, without prejudice to the rights of the parties. It is made clear that in case the petitioner is*

successful in convincing this Court that it is entitled to get benefit under one time settlement scheme, interest on the amunt, deposited by the auction purchaser, shall also be paid by the petitioner. On request, adjourned to August 31,2006."

In consequent to the undertaking given, the petitioner had deposited the requisite amount, which was ordered to be put in a fixed deposit. Vide order dated 31.8.2006, the respondent Nos.1 and 2 were directed to furnish details of the amount, which was due from the petitioner, as per *one time settlement scheme* till the period when the property of the petitioner was auctioned and thereafter up to date and otherwise also in the same manner i.e. without giving benefit of any scheme. In response thereto, affidavits have been filed by officers of respondent Nos.1 and 2. A reading thereof indicates that liability of the petitioner towards both the Corporations, without giving it benefit of any scheme, comes to about more than Rs.6 crore and if benefit of the sale proceeds are given to the petitioner, then the liability will be reduced by Rs.2.28 crore, for which amount, the property was sold. Assuming that the petitioner is given benefit of *one time settlement scheme*, it has been said by respondent No.2 that even then the petitioner shall be under an obligation to pay near about Rs.3 crore 23 lac and similarly in affidavit filed on behalf of respondent No.1, it has been said that without adjusting amount realised out of the sale proceeds of the property and without giving benefit under any scheme to the petitioner, the petitioner is under an obligation to pay an amount of Rs.1 crore 67.55 lac and if benefit of *one time settlement scheme* is given, it has to pay more than Rs.1 crore 55 lac.

At the time of arguments, an offer was made to the petitioner that let it pay entire amount, as claimed by both the Corporations, after

giving it benefit of *one time settlement scheme*, counsel for the petitioner did not raise any objection so far as amount claimed by respondent No.1 is concerned, however, by referring to communication inter-se the parties, he has stated that the amount claimed by respondent No.2, is on the higher side and the settlement is not acceptable to the petitioner. Even an option was given to the petitioner that after making the payment, as claimed by respondent No.2, it may raise a dispute, regarding recovery of the excess amount claimed, before competent forum, even that offer was not acceptable to the petitioner.

Above said facts clearly indicate that intention of the petitioner is only to delay the matter. After raising a huge amount of loan from respondent Nos.1 and 2, it had only returned Rs.1 lac against liability, which runs into more than Rs.6 crore. It is coming out from the records that intention of the petitioner is not bona fide. Loan was raised in the year 1998. Immediately thereafter, the petitioner had become defaulter. Mortgaged property was taken over by respondent No.1, by invoking provisions of Section 29 of the Act, in the year 2000. Even thereafter, no attempt was made to repay the amount or to offer any settlement. The property was notified for sale by way of publication on 27.6.2005 and thereafter, by writing Annexure P/1 dated 10.8.2005, it was intimated to the petitioner that respondent No.1 had received an offer of Rs.2 crore 28 lac for the property of the petitioner and if it had a better buyer, it may bring it to the notice of the Corporation within 14 days. On asking of the petitioner, more time to bring a better buyer was given to the petitioner vide letter dated 23.8.2005 (Annexure P/2). Thereafter, the petitioner made an attempt to delay the matter by writing letters without making any positive offer. Respondent No.1, vide letter dated 6.9.2005 (Annexure P/5), intimated to

the petitioner that its loan account can be settled for an amount of Rs.1 crore 6.99 lac and if the petitioner is interested, it shall deposit an amount of Rs.7.20 lac latest by 13.9.2005. Again an attempt was made by the petitioner, to delay the matter, by writing letter and asking for further extension of time, which was declined vide letter dated 16.9.2005 (Annexure P/8). Thereafter the sale was confirmed on 16.9.2005 and the possession of the property was handed over to the purchaser/ respondent No.3.

Counsel for the petitioner has failed to show that the sale was not bona fide. He has also failed to indicate any illegality in conducting the sale, as such, in view of ratio of the judgment of Hon'ble Supreme Court in *Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd. and others, (2005) 4 Supreme Court Cases 456*, it is not possible for us to interfere in sale of the property, which had become final.

Regarding objection of the petitioner that respondent No.2 is claiming excess amount, we are satisfied that earlier, the amount due was intimated to the petitioner after adjusting the amount received by respondent No.2 towards sale of the property mortgaged. We have gone through the calculation made, photocopy of which has been placed on record and are satisfied that the amount claimed is perfectly justified.

Relief to be granted under Articles 226/227 of the Constitution of India, is equitable and discretionary in nature. The petitioner has failed to convince this Court that it is entitled to get the same. Intention of the petitioner, as discussed earlier, is such that it is not possible to interfere in the proceedings initiated by respondent Nos.1 and 2 at this stage.

Dismissed.

An amount of 2,60,000/- U.S.Dollars, which was deposited by the petitioner, was ordered to be put in fixed deposit. On an application made to the Registrar General of this Court, it is ordered that the fixed deposit receipt be encashed and the above-said amount, along with interest, if any accrued thereon, be returned to the petitioner/ its nominee, through a demand draft, after necessary verification, regarding identity of the person concerned.

(Jasbir Singh)
Judge

October 16, 2006 **(Pritam Pal)**
gk **Judge**